

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 03 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

VICTOR RANGEL-FLETES,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 04-75993

Agency No. A091-077-379

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 29, 2009**

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

Victor Rangel-Fletes, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's ("IJ") order denying his motion to reconsider. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition for review.

We review for abuse of discretion the denial of a motion to reconsider. *Oh v. Gonzales*, 406 F.3d 611, 612 (9th Cir. 2005). The BIA did not abuse its discretion when it determined that Rangel-Fletes failed to submit proof that his I-140 visa petition had been approved and concluded that his case should therefore not be remanded. *See Agyeman v. INS*, 296 F.3d 871, 878 (9th Cir. 2002) (an approved visa petition is a prerequisite for adjustment of status).

We do not consider Rangel-Fletes' challenge to the Administrative Appeals Office's 2005 decision denying his I-140 visa petition, because our review is limited to the administrative record. *See Chouchkov v. INS*, 220 F.3d 1077, 1080 (9th Cir. 2000).

We have jurisdiction to review the BIA's March 27, 2003, order dismissing Rangel-Fletes' appeal of an IJ's decision denying his application for withholding of removal, *Lopez-Ruiz v. Ashcroft*, 298 F.3d 886, 887 (9th Cir. 2002) (order), and review for substantial evidence factual findings, *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (9th Cir. 1992). Substantial evidence supports the agency's denial of Rangel-Fletes' withholding of removal claim because his experiences in Mexico do not rise to past persecution. *Cf. Hernandez-Montiel v. INS*, 225 F.3d 1084,

1097-98 (9th Cir. 2000) (holding that gay man was persecuted where he was attacked by a mob and twice raped by Mexican police); *see Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir. 1995) (distinguishing between persecution and harassment or discrimination). Substantial evidence further supports the agency's determination that Rangel-Fletes failed to establish a clear probability that he would be persecuted based on his sexual orientation upon his return to Mexico. *See Hoxha v. Ashcroft*, 319 F.3d 1179, 1185 (9th Cir. 2003).

PETITION FOR REVIEW DENIED.